

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA96-480

In The Matters of the)
Suspension of license of)
IRVIN J. FORET)
Metairie, Louisiana)
Technician Plus Class)
Amateur Radio Operator License)
and)
Monetary Forfeiture Against)
IRVIN J. FORET)
Metairie, Louisiana)
Amateur Radio Station KB5UJD)
)

**SUSPENSION ORDER AND NOTICE OF OPPORTUNITY FOR HEARING UPON
MONETARY FORFEITURE**

Adopted: April 5, 1996

Released: April 5, 1996

By the Acting Chief, Wireless Telecommunications Bureau:

1. The Commission has before it for consideration the Technician Plus Class amateur operator license held by Irvin J. Foret (Mr. Foret), who is the licensee of amateur station KB5UJD.

2. The Commission has received numerous complaints about interference to amateur radio operations in the New Orleans, Louisiana area. In this connection, Commission personnel observed transmissions made by Mr. Foret over amateur station KB5UJD between 7:59 and 8:18 p.m. Central Time on December 4, 1995, between 7:59 and 9:23 p.m. on January 15, 1996, and between 7:59 and 9:08 p.m. on January 29, 1996. It appears that:

(a) Certain of Mr. Foret's transmissions on January 29, 1996, constituted willful or malicious interference to the transmissions of other amateur radio stations, in apparent violation of Section 333 of the Communications Act of 1934, as amended (Act), 47

U.S.C. § 333, and Section 97.101(d) of the Commission's Rules, 47 C.F.R. § 97.101(d);

(b) Mr. Foret was lacking in candor and misrepresented material facts to the Commission by stating, during the inspection of his station, that he did not make the transmissions observed by Commission personnel on January 29, 1996, in apparent violation of the public interest, convenience and necessity standard of Section 307 of the Communications Act of 1934, as amended, 47 C.F.R. § 307;

(c) Mr. Foret's transmissions on December 4, 1995, and on January 15 and 29, 1996, were unidentified, in apparent violation of Section 97.119(a) of the Commission's Rules, 47 C.F.R. § 97.119(a);

(d) Mr. Foret's transmissions on December 4, 1995, and on January 15 and 29, 1996, included music, in apparent violation of Section 97.113(a)(4) of the Commission's Rules, 47 C.F.R. § 97.113(a)(4); and

(e) Certain of Mr. Foret's transmissions observed on December 4, 1995, and on January 29, 1996, at times (indicated above) outside the 10:00 p.m. to 6:00 a.m. "safe harbor" period were obscene or indecent¹, in apparent violation of Section 97.113(a)(4) of the Commission's Rules, 47 C.F.R. § 97.113(a)(4);

3. In view of the circumstances set forth above, IT IS ORDERED that:

(a) Mr. Foret's Technician Plus amateur operator license IS SUSPENDED, under Sections 303(m)(1)(A), (D) and (E) of the Act, 47 U.S.C. § 303(m)(1)(A), (D), (E), for two years; and

(b) It shall be determined, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, whether an ORDER OF FORFEITURE shall be issued against Mr. Foret in an amount not exceeding the statutory maximum for the willful and repeated violations of the rule provisions specified above.

4. IT IS FURTHER ORDERED that this case will be decided upon the following issues:

¹ In Action For Children's Television v. FCC, 58 F. 3d 654 (D.C. Cir. 1995), the Court of Appeals found that there is a reasonable risk that children are in the broadcast audience between 6:00 a.m. and 10:00 p.m. In David Hildebrand, 2 FCC Rcd 2708 (1987), the Commission found that indecency should be treated in the same manner as in the broadcast service and that 7:00 p.m. is a time when there is a reasonable risk that children are in the amateur audience. In view of Action For Children's Television, we find the time period between 7:59 p.m. and 9:08 p.m., when Commission personnel were observing Mr. Foret's transmissions, is a period when there is a reasonable risk that children are in the amateur audience. Although it is not necessary to prove that there were actually children in the audience to establish indecency, the Bureau anticipates offering evidence that a child was actually in the audience.

(a) whether Mr. Foret willfully and/or repeatedly violated Section 333 of the Act, 47 U.S.C. § 333, and Sections 97.101(d), 97.113(a)(4), and 97.119(a) of the Commission's Rules, 47 C.F.R. §§ 97.101(d), 97.113(a)(4), 97.119(a), as alleged above, on the dates indicated above;

(b) whether Mr. Foret was lacking in candor and/or misrepresented material facts to the Commission, as alleged above, in willful violation of the public interest, convenience and necessity standard of Section 307 of the Communications Act of 1934, as amended, 47 C.F.R. § 307.;

(c) whether the suspension of Mr. Foret's Technician Plus amateur operator license for the remainder of its term should be affirmed, modified or dismissed;

(d) whether a monetary forfeiture against Mr. Foret is warranted; and

(e) in the event that a monetary forfeiture is warranted, to determine the amount of the forfeiture in accordance with the statutory provisions of Section 503(b)(2)(C) of the Act, 47 U.S.C. § 503(b)(2)(C).

5. IT IS FURTHER ORDERED that the captioned suspension and forfeiture proceedings are CONSOLIDATED pursuant to Section 1.227 of the Commission's Rules, 47 C.F.R. § 1.227. The captioned proceedings involve substantially the same issues and their consolidation will be conducive to the proper dispatch of business and to the ends of justice.

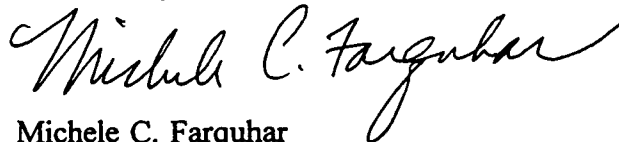
6. IT IS FURTHER ORDERED that to avail himself of the right, under Section 1.91(c) of the Commission's Rules, 47 C.F.R. § 1.91(c), to present evidence at a hearing in these proceedings, Mr. Foret must file a request for a hearing within 30 days after receiving this Order. If Mr. Foret requests a hearing, a subsequent order will designate the time, place and the presiding Administrative Law Judge for the hearing. If Mr. Foret does not request a hearing, the Commission will decide issues (a) through (e), set out above Paragraph 4, after considering the investigative record and any written statement submitted by Mr. Foret.

7. IT IS FURTHER ORDERED that if Mr. Foret files a timely request for a hearing or a written statement, the suspension of his operator license will be held in abeyance pending a decision; and that, if Mr. Foret does not file a timely request for a hearing or a written statement, the suspension of his amateur operator license will take effect 30 days after his receipt of this Order.

8. IT IS FURTHER ORDERED that, under Section 312(d) of the Act, 47 U.S.C. § 312(d), both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Wireless Telecommunications Bureau as to all issues.

9. IT IS FURTHER ORDERED that a copy of this Order shall be sent to Mr. Foret by Certified Mail -- Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Michele C. Farquhar". The signature is written in a cursive style with a large, stylized "M" and "F".

Michele C. Farquhar
Acting Chief, Wireless Telecommunications Bureau